IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 17503 of 2004(S)

OA.1018/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3.

2. THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

3. THE SENIOR DIVISIONAL MECHANICAL ENGINEER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

BY ADV. SRI.MURALEEDHARA KAIMAL, ADDL.CGSC

RESPONDENTS:
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1. M.MANICKAM, PASSENGER DRIVER, SOUTHERN RAILWAY, ERODE.

2. THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH, REPRESENTED BY THE REGISTRAR.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SMT.D.HEERA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C) NO: 17503/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE MEMORANDUM OF CHARGES ISSUED TO THE RESPONDENT DT 15.12.99

EXT.P2. COPY OF THE ENQUIRY REPORT BY THE ENQUIRY AUTHORITY.

EXT.P3. COPY OF THE OA NO. 1018/2001 DT. 28/10/01.

EX.T.P4. COPY OF THE REPLY STATEMENT.

EXT.P5. COPY OF THE PENALTY ADVICE DT. 16/2/01.

EXT.P6. COPY OF THE REVISIONAL ORDER DT. 22/6/01.

EXT.P7. COPY OF THE IMPUGNED JUDGMENT DT. 17/10/2003 IN OA NO. 1018/2001.

RESPONDENT'S EXHIBITS NIL.

True copy

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 17503 OF 2004-S

Dated 13th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No.1018/2001 before the Central Administrative Tribunal, Ernakulam Bench. Ext.P3 is the copy of the said O.A filed before the C.A.T.

2. The brief facts of the case are the following: The 1st respondent herein, the applicant before the C.A.T was the driver of a passenger train. He has been served with Ext.P1 charge memo dated 15.12.1999, reporting certain irregularities in the matter of stopping a passenger train and thereafter in re-starting it. The relevant charge reads as follows:

> "Sri.Manickam, Staff No.J./M.1599 while working as driver of No.504 Pass, on 25.11.99 was careless and negligent in his duties. At TNT station he passed the Road 1 Up. L.S.S at 'ON' without ensuring that signals have been cleared by SM/TNT before starting the train. After passing the signal at 'ON' he also re-started the train on the oral instructions of the SM without following the relevant procedure and entered into the TNT-DSPT Block section without proper authority to proceed. He has thus violated G.R. 3.78(i)(a), (b), S.R.3.81(ii),

G.R.4.35(i) and G.R.14.08(a) and G.R.3.83(i).

He has not shown devotion to duty and violated Rule 3.1 (ii) & (iii) of Rail Services (Conduct) Rules."

The 1st respondent denied the allegations. So, an enquiry officer was appointed to enquire into the charge. The said officer submitted Ext.P2 report, exonerating the 1st respondent from the first limb of the above charge, that is, regarding passing the road 1 Up. Last Stop Signal at 'ON' position. The second limb is concerned with the re-starting of the train from such a position. The second limb of the said charges comes under the sweep of S.R.3.81(ii). The disciplinary authority accepted the enquiry report and imposed a punishment of barring one increment for one year. The 1st respondent was proposing to file an appeal, it is submitted. While so, the appellate authority suo motu issued notice, proposing to revise the penalty order and enhance the same. Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 enables the appellate authority to suo motu revise the order of the disciplinary authority. But, the said power is subject to two limitations. One is that no appeal has been preferred and the second condition is that the period of limitation, which is 45 days from the date of receipt of the order is over. In this case the notice was admittedly issued before the expiry of the appeal period. The 1st respondent filed reply

to the same. But, the appellate authority overruling his objection imposed the punishment of barring the increment for three years. The O.A was filed challenging the original as well as the order in revision. The C.A.T heard the O.A and allowed the same by Ext.P7 order dated 17.10.2003. This writ petition was filed challenging the said order, by the respondents therein.

3. We heard the learned counsel on both sides. Apart from the technical contentions raised, we examined the merits of the case also. It is common case that the first limb of the charge, which is mentioned above, was not established against the delinquent. If that be so, we feel that the very foundation of the second limb of the charge also goes. The second limb of the charge is concerned with the re-starting of the train, which is stopped in a prohibited terrain. The relevant Rule S.R.3.81(ii) opens with the following sentence:

> "When leaving a station, if a train is brought to a stand after passing partly or completely, the Starter or Advanced Starter at 'ON' without proper authority, the Guard shall inform the Station Master."

So, the said Rule concerns the starting of a train, which is stopped after passing the Starter or Advanced Starter at "on". Since the first limb of the charge concerning the stopping of the train at such a point stands disproved,

the very foundation of the second limb of the charge also goes. Therefore, we find no reason to interfere with the order of the Central Administrative Tribunal. Accordingly, we affirm the same, though on different grounds.

In the result, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/